IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO. 34 OF 1994

Sharda Ashok Patole — Appellant (Org. Accused)

Vs.

The State of Maharashtra — Respondent

Mr.R.V.More with Mr.Umesh Mankapure for appellant.
Mr.R.Y.Mirza, APP for State.

CORAM: S.S.PARKAR & S.R.SATHE,JJ.

September 17, 2004.

ORAL JUDGMENT (PER S.S.PARKAR,J.)

1. This appeal is filed challenging the judgment and order dated 17/11/1993 delivered by the IV Addl. Sessions Judge, Solapur convicting the appellant for offence under Section 302 of IPC and sentencing her to RI for life and also convicting her for offence under Section 201 of IPC and sentencing her to RI for five years in Sessions Case No.123 of 1993.

2. Briefly narrated the prosecution case is as follows:

. The incident took place in the afternoon of 26/2/1993 in the residential house of the accused and the deceased in Irrigation Colony at Bhimanagar in taluka Madha, Dist.Solapur. The appellant Sharda and

deceased Sarla were real sisters. The appellant was married to Ashok Patole and had three children from him, one son and two daughters. After the death of son of the appellant, she got her younger sister married to her husband about one and half years prior to the date of incident. After marriage deceased Sarla was residing with her husband Ashok Patole and the appellant in the quarter no.93 allotted to him in Bhimanagar. On the date of the incident when the neighbours saw smoke coming out from the house of the deceased at about 1.45 p.m. there was commotion. The neighbours collected near the house and called Ashok Patole from his place of work. He pushed open the door of the kitchen and found Sarla burning inside the kitchen of his house. The police were informed and Dr.Karnekar was called to examine Sarla. He advised them to shift her to Primary Health Centre at Tembhurni. At the health centre Dr.Patil declared Sarla dead. A case was registered initially as accidental case. The inquest panchanama was drawn on the dead body and the dead body was sent for post-mortem examination to Primary health Centre at Modnimb. Dr.Chavan, PW 10 performed autopsy on the dead body. He found a piece of cloth inside the mouth and another wrapped around the neck of the dead

body. He noticed ligature marks on the neck and fractures of tracheal rings of thyroid cartilage. As per the Medical Officer who performed autopsy the deceased Sarla died due to strangulation. PSI Nikam thereafter went to the place of incident i.e. the house of the deceased and the accused. The place of incident i.e. kitchen room was shown by the accused herself. Spot panchanama (Exh.30) was drawn and the articles found in the kitchen room were attached under the said panchanama. On the following day i.e. on 27/2/93 the Investigating Officer obtained advance certificate (Exh.20) about the cause of death. The I.O. thereafter went to the place of incident and recorded the statements of number of witnesses including two neighbours i.e. PW 7 and PW 11 and Dr.Karnekar who had examined the deceased at her residence immediately after the incident. On the basis of the medical certificate and the statements of witnesses the I.O. formed the opinion that Sarla was murdered by accused and, therefore, he lodged his report (Exh.31) and registered the crime at about 5.15 p.m. on 27/2/93. He then continued further investigation in the matter and recorded the statements of the relatives of deceased Sarla. After completion of the investigation the charge-sheet came

to be filed and the case was committed to the Sessions Court.

3. Before the Sessions Court charges were framed for offences under Sections 302 and 201 of IPC against the accused to which she pleaded not guilty. On behalf of the prosecution 16 witnesses were examined including two neighbours, Dr.Karnekar who had examined Sarla at her residence immediately after the incident and Dr.Chavan who performed post-mortem on the dead body. Some of the panchas as well as the brother of the accused and the deceased had turned hostile. The defence of the accused was of total denial. After considering the entire evidence on record the trial Court convicted the appellant-accused for offence under Section 302 of IPC and sentenced her to RI for life and also convicted her for offence under Section 201 of IPC and sentenced her to RI for five years by the impugned judgment and order dated 17/11/1993 which is under challenge in this appeal.

4. We heard the defence Advocate and the learned APP for the State. After taking us through the evidence of all the witnesses the learned defence

Advocate contended that the motive is not proved and in the absence of motive conviction based on circumstantial evidence cannot sustain. He also contended that the presence of the accused at the relevant time at the place of incident is also not proved beyond reasonable doubt and, therefore, the benefit of doubt should go to the accused. He also relied on certain judgments of the apex Court to which reference will be made subsequently.

5. It is not in dispute that the appellant was married to Ashok Patole about 15 years ago and she had given birth to three children from him, one son and two daughters. As per the evidence of PW 12 Rajendra Kharat, brother of the accused, about 4-5 years before the incident the son of the accused died and thereafter Sarla, the younger sister of the appellant, was married to Ashok Patole i.e. the husband of the appellant-accused about one and half years before the date of incident. After the marriage of Sarla she was staying with her husband and the appellant in the quarter at Bhimanagar allotted to Ashok Patole by his employers. He was working as driver in Bhima Hydro Electricity Division. The witness, though, was examined to prove

that there used to be quarrels between the two sisters i.e. the deceased and the accused both of whom were wives of Ashok Patole, however, he did not support the prosecution case about the quarrel between them and was, therefore, declared hostile.

6. The prosecution has examined two neighbours PW 7 Balkrishna Supekar and PW 11 Sunil Dhende who had seen the accused and Sarla on the date of incident between 1 and 1.15 p.m. in their house. The incident in question had taken place sometime between 1.15 and 1.45 p.m. in their residential quarter no.93 which was allotted to their husband by his employers. PW 7 Balkrishna Supekar was resident of adjoining Quarter No.94. He was working as Technical Assistant in the same organisation as the husband of the accused and the deceased. His office hours were from 9 a.m. to 1 p.m. and 3 p.m. to 5 p.m. He used to go to his residence for meals. On the date of the incident he went home at about 1 p.m. for taking his meals. While going to his residence he had seen both accused and the deceased Sarla in their house. At about 1.45 p.m. he heard commotion outside. When he came out of his house he saw smoke coming out from the kitchen of the house of the

accused. He and other neighbours including PW 11 went there. They sent for Ashok Patole, the husband of the accused from his office. When Ashok Patole came there, he opened the rear side door of the kitchen by pushing it. The said door was latched from inside. Sarla was found lying in burnt condition in the kitchen. Dr.Karnekar, PW 4 was called. The said doctor, after seeing burnt Sarla, advised them to shift her to Primary Health Centre, Tembhurni. A jeep of the department was brought and Sarla was taken to Tembhurni hospital. He has also deposed in cross-examination that at that time outer door of the first room of the house of Patole was open. He has also stated that Sarla was pregnant at that time.

7. Similarly the other neighbour PW 11, Sunil Dhende has deposed that since last two years he was working as typist in the Division Office of Bhima Hydro Electricity Division. He was the resident of Quarter No.92 i.e. just adjoining the residence of the accused. He has deposed that there used to be quarrels between the accused and Sarla. On the date of the incident at about 1.15 p.m. he returned home for taking meals. While going to his house from the

office the house of the accused comes first. On his way back home he saw both the accused and the deceased Sarla sitting in their house. After taking meals in his house he heard commotion. Therefore, he went out. He saw smoke coming out from the kitchen of the house of Patoles. PW 7 and other neighbours had gathered there and a boy was sent to call Ashok Patole. When he came he opened the rear side door of the kitchen of his house by pushing it. Dr.Karnekar, PW 4 came there and he advised to shift Sarla to the hospital. Therefore Sarla was taken to the hospital in the office jeep.

8. From the evidence of the aforesaid two neighbours it appears that a little before the incident took place i.e. at about 1.15 p.m. on the date of the incident both accused as well as the deceased Sarla were in their house. Ashok Patole, the husband of these two sisters was in his office and came at the place of incident after he was sent for by the neighbours when smoke was seen coming from the kitchen of his house. When the neighbours gathered near the house of the accused, accused was not there and the door of the kitchen was latched from inside which was pushed open by Ashok Patole,

the husband of the two sisters. The presence of accused at about 1.15 p.m. as deposed to by both these witnesses assumes importance as she was seen a few minutes before the incident in question. The accused used to attend the tailoring classes run by PW 8 Vimal Deokar. Though P.W.8 had turned hostile and did not support the prosecution case in all respects, her evidence shows that she was also working as Junior Clerk in Hydro Power Division at Bhimanagar. Her working hours were from 9 a.m. to 1 p.m. and 3 p.m. to 6 p.m. At 1 p.m. she used to leave the office and return home for lunch walking. According to her she used to take 10 to 15 minutes to reach home from her office and from 1-30 p.m. to 2-30 p.m. she used to take tailoring classes at her residence. The accused had also joined her tailoring classes since about 15 days prior to the date of incident. She has deposed that accused used to tell her that there used to be quarrels in her house. She has also deposed that accused had told her that her sister was pregnant and she always used to quarrel with the accused. On the date of the incident P.W. 8 had gone to her house at about 1.15 p.m. Thereafter she took meals. She started her tailoring class at about 1.30 p.m. That time accused was

present at her house when a ten year old girl came to inform the accused about the mishap in her house. Thus though she had turned hostile she has deposed about the quarrels which used to take place in the house of the accused as told to her by accused herself and this supports the evidence of neighbour Dhende PW 11 who has also deposed about the quarrels between accused and deceased Sarla. The residential quarter of PW 8 Vimal Deokar, who was running the tailoring classes, is also in the same colony.

9. The smoke was seen by the neighbours at about 1.45 p.m. As per the medical evidence the burning of Sarla was post mortem after she was strangulated to death. Accused has not denied her presence in her house between 1 and 1.30 p.m. on the date of the incident. It is also not denied that she was residing in the said house along with deceased Sarla and her husband Ashok. It is not her case that she had left her house earlier on that day. It is true that at 1.45 p.m. when the neighbours saw the smoke coming out of the kitchen of the house of the accused, accused was not present and she was in the house of PW 8 Vimal Deokar at 1.30 p.m. She was seen by two neighbours at about 1.15 p.m. in her house.

It was, therefore, quite possible for the accused to have strangulated Sarla between 1.15 p.m. and 1.30 p.m. and thereafter set her body on fire in the kitchen room before 1.30 p.m. and then leave for the house of PW 8 for attending tailoring classes. It has come in the evidence that the doors of the kitchen were latched from inside. Apart from the medical evidence that the burning was post mortem, there was no reason for Sarla to have latched the door of the kitchen from inside. Moreover the evidence goes to show that inside latch of the door of the kitchen could be latched from outside which appears to have been done by the accused in this case to create an impression that the deceased Sarla had set herself on fire and committed suicide. The time chosen for the same was just before 1.30 p.m. when the accused had to go to attend the tailoring classes. PSI Nikam PW 15 in his deposition has stated that kitchen where the body of deceased Sarla was burning had two doors, one in the northern outer wall and the other in the southern wall. The northern door of the kitchen opens inside the kitchen. It had a moving latch. He has further stated that if part of that latch was put in the staple and the door was pulled from outside the door

could be closed and the said door could be opened if the door was pushed from outside inspite of the fact that it was latched from inside. He has deposed that he had demonstrated this at the time of drawing of spot panchanama and the same is mentioned in the spot panchanama (Exh.30).

10. The evidence of Dr.Chavan PW 10 who had conducted autopsy on the dead body shows that he had noticed following external injuries:

> (1) Superficial burns involving the skin all over the body surface, head, face, chest, abdomen, both arms and both lower legs, feet. Hair is partially burnt. Skin black in colour. No line of redness. No vesication. No signs of inflammation present. Smells of kerosene present.
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> (2) One ligature mark round the neck situated below the thyroid cartilage well defined and slightly depressed mark. 3 x 37 cm x 1.5 cm x 1/2 cm in size. Piece of cloth found in the mark about 15 cm x 1 cm adherent to skin. Edges and both ends of cloth found burnt. Surrounding skin of the mark is black. Knot mark is present posteriorly on the nape of the neck. The base of knot mark is pale with reddish and ecchymosed margins. It is dry, hard and parchment like.

According to him injury no.1 was due to kerosene burns and injury no.2 was due to strangulation by means of cloth. The age of the injuries was within

24 hours. He has categorically deposed that injury no.1 was post mortem and injury no.2 was ante mortem. On internal examination he found the brain was congested and had haemorrhages. He also noticed fracture of two tracheal rings and cornue of thyroid cartilage. He had also noticed 36 weeks' pregnancy in her uterus. There was male foetus in her womb. The cause of death given by him is asphyxia due to strangulation. He has deposed that there was fracture of tracheal rings cornue of thyroid cartilage, ligature marks round the neck with depressed marks, congestion of brain, lungs and dark blood in the right chamber of heart and left chamber empty, congestion of abdominal organs were signs of asphyxial death. He had found piece of cloth (article no.3) inside the mouth of the deceased. He had also found the piece of cloth around the neck of the deceased which was burnt and got fixed to the skin.

11. The medical evidence of Dr.Chavan leaves no doubt that the deceased had died because of the strangulation and her body was set ablaze after she died due to strangulation. His evidence also shows that before strangulating the deceased a large piece

of cloth was thrust into her mouth so that she could not make noise. From the evidence of the neighbours it is clear that no one had heard any cry or shouts of Sarla and that must be due to the piece of cloth thrust into her mouth. Secondly the neighbours came out not hearing the cries or shouts of Sarla because of burning but due to the commotion raised by some persons after seeing smoke coming out from the kitchen of the house of the accused. If Sarla had set herself on fire she would not have remained silent inside the kitchen room without raising shouts because of the unbearable pain caused due to the burn injuries. The fact that no one heard her cries or shouts also lends support to the prosecution case and the medical evidence that she was set on fire after she died due to strangulation. It was quite possible for the accused to have set the dead body of Sarla on fire few minutes before 1-30 p.m. and leave for her tailoring classes. It would take about 15-20 minutes for the neighbours to notice the smoke coming out of the kitchen room. If Sarla had set herself on fire the neighbours would have heard her cries even before the smoke could be noticed by any of the neighbours. The prosecution case that Sarla was strangulated to death is proved by the medical evidence when

according to Dr.Chavan there were ligature marks round the neck and fracture of thyroid cartilage.

12. Thus the prosecution has proved the motive against the accused as there used to be quarrels between the two sisters who were living under the same roof being married to the same man. Secondly, the medical evidence proves that burning was post mortem and Sarla was strangulated to death before she was set on fire. The fracture of cartilage would not be possible unless some other person were to press her neck and strangulate her. The finding of piece of cloth in the mouth of the deceased by the doctor who performed autopsy goes to show that the said cloth was used so that she would not be in a position to shout when she was being strangulated and, therefore, no one could hear her cries or shouts. Thus the deceased had suffered a homicidal death and the burning which was post mortem was only possible by another person and cannot be the case of suicide by burning and the last and important circumstance is that accused was the resident of the same house and about half an hour before the smoke was noticed by the neighbours accused was present in the house. Though the accused had an opportunity, she did not

explain her presence or absence at the place of incident at the relevant time. It is not her defence that she was not in her house between 1 p.m. and 1.30 p.m. The evidence of PW 8 Vimal only shows that accused was at her place at 1.30 p.m. She has not stated that accused was in her house at 1.15 p.m. when she returned to her house for lunch. It is not the case of the accused that she had gone to any other place before going to attend tailoring classes which commenced at 1.30 p.m. There is nothing on record to show that there was possibility of any other person going to the house of the deceased at the relevant time who could have committed murder of Sarla. The husband of the deceased Ashok Patole has been stated to be in his office and was summoned by the neighbours after seeing smoke in his house.

13. On behalf of the accused it was argued that prosecution has not proved the motive and in that connection some judgments of the apex Court have been cited. But as discussed earlier, though the brother of the deceased who is also brother of the accused has turned hostile and did not support the prosecution case about the quarrels taking place between two sisters, the evidence of neighbour PW 11

and in particular the evidence of PW 8 Vimal, who has turned hostile, shows that accused herself used to tell her that there used to be quarrels in their house. The fact that Sarla, who was pregnant for 36 weeks i.e. in her ninth month of pregnancy had no reason to end her life nor her husband Ashok Patole, who had married her for having a son after the death of his son from accused Sharda, could have done so. The learned defence Advocate cited the judgment of the Supreme Court in the case of Uday Kumar v. State of Karnataka reported in **(1998) 7 SCC 478**. That was a case where motive was not proved, but the proved circumstances completed the chain of evidence hence it was held that it cannot be said that in the absence of motive the other proved circumstances are of no consequence. Now in this case, as pointed out earlier, the prosecution has proved that there used to be quarrels in the household which constituted motive for the accused to kill Sarla.

14. Another criticism made by the defence Advocate is that the ligature marks were not noticed by PW 4 Dr.Karnekar who had examined Sarla immediately after the incident and, therefore, Dr.Chavan who performed autopsy should not be believed when he stated that

there were ligature marks. The defence Advocate has also argued about the absence of reference to ligature marks in the inquest panchanama. He has then referred to the evidence of Dr.Karnekar PW 4 who had deposed that he felt that there was some movement in the abdomen and he thought that she was very serious so he wanted the Executive Engineer to shift her to hospital. It is significant to note that Dr.Karnekar had not stated before the police that there was any motion in the body of Sarla when he examined her. That omission is proved by the Investigating Officer. Unfortunately PW 4 who was the medical practitioner had not supported the prosecution case and, therefore, he was permitted to be cross-examined by the prosecution. The said omission undoubtedly amounts to contradiction. The said witness even does not say that he had examined the patient. Noticing that all the clothes on the body of Sarla were burnt he gave advice to shift her to the hospital. It seems P.W. 4 had not even examined Sarla at that time. As regards the absence of reference to ligature marks in the inquest panchanama the prosecution witnesses have stated that even the neck portion of the deceased Sarla was burnt and, therefore, they must not have noticed the

ligature marks which only doctor performing the post-mortem could notice. Surely the panch witnesses and police officer drawing the inquest panchanama could not have noticed the internal fracture of thyroid cartilage so also Dr.Karnekar who, seeing burn injuries all over the body seems to have simply advised those who were present there to take her to the hospital.

15. The reliance by the learned defence Advocate on some of the judgments of the Supreme Court are of no assistance to the defence case. He has cited the judgments of the Supreme Court in the cases of Bandi Mallajah v. State of A.P. reported in **AIR 1980 SC 1160**, Akhilesh Hajam v. State of Bihar reported in **1995 Supp (3) SCC 357**, Subimal Sarkar v. Sachindra Nath Mandal reported in **(2003) 2 SCC 566** and Budha Satya Venkata S. Rao v. State of A.P. reported in **1994 Supp (3) SCC 639**. They lay down the principles about the circumstantial evidence in which motive plays important role but as pointed out earlier in the case of Uday Kumar (Supra) the Supreme Court has held that when other circumstances complete the chain of events the same cannot be dislodged as of no consequence only because of the absence of motive.

16. In the aforesaid circumstances we have no doubt that the prosecution has proved beyond reasonable doubt that the cause of death of Sarla was asphyxia due to strangulation and her burning was post mortem in the kitchen of her own house and only some time before the smoke coming from the house of the accused was noticed by the neighbours, accused was present in the house along with the deceased and there was no possibility of any other person coming there who could have committed the crime in question. As the accused was the only person who was last seen together with the deceased in the house where the deceased was strangulated and then set on fire, we cannot but confirm the order of conviction and sentence recorded by the trial court. Accused is guilty both of committing homicidal death of Sarla as well as for causing disappearance of evidence of crime committed by her by setting the dead body on fire. So far as the sentences on two counts are concerned they can be made to run concurrently in the facts and circumstances of the case.

17. In the result, the order of convictions and sentences recorded against the appellant-accused by the IV Additional Sessions Judge, Solapur in Sessions Case No.123 of 1993 are confirmed with a direction that the substantive sentences on both the counts shall run concurrently. Appeal is thus dismissed and the appellant is directed to surrender to her bail bonds forthwith.

(S.S.PARKAR,J.)

(S.R.SATHE,J.)